

Calendar No. 611

109TH CONGRESS
2D SESSION**S. 3901**

To authorize trial by military commission for violations of the law of war,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2006

Mr. WARNER, from the Committee on Armed Services, reported the following
original bill; which was read twice and placed on the calendar

A BILL

To authorize trial by military commission for violations of
the law of war, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Commissions
5 Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The Constitution of the United States
9 grants to Congress the power “To define and punish

1 . . . Offenses against the Law of Nations”, as well
2 as the power “To declare War . . . To raise and sup-
3 port Armies . . . [and] To provide and maintain a
4 Navy”.

5 (2) The military commission is the traditional
6 tribunal for the trial of persons engaged in hostilities
7 for violations of the law of war.

8 (3) Congress has, in the past, both authorized
9 the use of military commission by statute and recog-
10 nized the existence and authority of military com-
11 missions.

12 (4) Military commissions have been convened
13 both by the President and by military commanders
14 in the field to try offenses against the law of war.

15 (5) It is in the national interest for Congress to
16 exercise its authority under the Constitution to enact
17 legislation authorizing and regulating the use of
18 military commissions to try and punish violations of
19 the law of war.

20 (6) Military commissions established and oper-
21 ating under chapter 47A of title 10, United States
22 Code (as enacted by this Act), are regularly con-
23 stituted courts affording, in the words of Common
24 Article 3 of the Geneva Conventions, “all the judicial

1 guarantees which are recognized as indispensable by
2 civilized peoples”.

3 **SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.**

4 (a) IN GENERAL.—The President is authorized to es-
5 tablish military commissions for the trial of alien unlawful
6 enemy combatants engaged in hostilities against the
7 United States for violations of the law of war and other
8 offenses specifically made triable by military commission
9 as provided in chapter 47 of title 10, United States Code,
10 and chapter 47A of title 10, United States Code (as en-
11 acted by this Act).

12 (b) CONSTRUCTION.—The authority in subsection (a)
13 may not be construed to alter or limit the authority of
14 the President under the Constitution and laws of the
15 United States to establish military commissions for areas
16 declared to be under martial law or in occupied territories
17 should circumstances so require.

18 (c) SCOPE OF PUNISHMENT AUTHORITY.—A military
19 commission established pursuant to subsection (a) shall
20 have authority to impose upon any person found guilty
21 under a proceeding under chapter 47A of title 10, United
22 States Code (as so enacted), a sentence that is appropriate
23 for the offense or offenses for which there is a finding
24 of guilt, including a sentence of death if authorized under
25 such chapter, imprisonment for life or a term of years,

1 payment of a fine or restitution, or such other lawful pun-
 2 ishment or condition of punishment as the military com-
 3 mission shall direct.

4 (d) EXECUTION OF PUNISHMENT.—The Secretary of
 5 Defense is authorized to carry out a sentence of punish-
 6 ment imposed by a military commission established pursu-
 7 ant to subsection (a) in accordance with such procedures
 8 as the Secretary may prescribe.

9 (e) ANNUAL REPORT ON TRIALS BY MILITARY COM-
 10 MISSIONS.—

11 (1) ANNUAL REPORT REQUIRED.—Not later
 12 than December 31 each year, the Secretary of De-
 13 fense shall submit to the Committees on Armed
 14 Services of the Senate and the House of Representa-
 15 tives a report on any trials conducted by military
 16 commissions established pursuant to subsection (a)
 17 during such year.

18 (2) FORM.—Each report under this subsection
 19 shall be submitted in unclassified form, but may in-
 20 clude a classified annex.

21 **SEC. 4. MILITARY COMMISSIONS.**

22 (a) MILITARY COMMISSIONS.—

23 (1) IN GENERAL.—Subtitle A of title 10,
 24 United States Code, is amended by inserting after
 25 chapter 47 the following new chapter:

1 **“CHAPTER 47A—MILITARY COMMISSIONS**

“SUBCHAPTER	Sec.
“I. General Provisions	948a.
“II. Composition of Military Commissions	948h.
“III. Pre-Trial Procedure	948q.
“IV. Trial Procedure	949a.
“V. Sentences	949s.
“VI. Post-Trial Procedure and Review of Military Commissions	950a.
“VII. Punitive Matters	950aa.

2 **“SUBCHAPTER I—GENERAL PROVISIONS**

“Sec.
“948a. Definitions.
“948b. Military commissions generally.
“948c. Persons subject to military commissions.
“948d. Jurisdiction of military commissions.

3 **“§ 948a. Definitions**

4 “In this chapter:

5 “(1) ALIEN.—The term ‘alien’ means an indi-
6 vidual who is not a citizen of the United States.

7 “(2) CLASSIFIED INFORMATION.—The term
8 ‘classified information’ means the following:

9 “(A) Any information or material that has
10 been determined by the United States Govern-
11 ment pursuant to statute, Executive order, or
12 regulation to require protection against unau-
13 thorized disclosure for reasons of national secu-
14 rity.

15 “(B) Any restricted data, as that term is
16 defined in section 11 y. of the Atomic Energy
17 Act of 1954 (42 U.S.C. 2014(y)).

1 “(3) **LAWFUL ENEMY COMBATANT.**—The term
 2 ‘lawful enemy combatant’ means an individual who
 3 is—

4 “(A) a member of the regular forces of a
 5 State party engaged in hostilities against the
 6 United States;

7 “(B) a member of a militia, volunteer
 8 corps, or organized resistance movement belong-
 9 ing to a State party engaged in such hostilities,
 10 which are under responsible command, wear a
 11 fixed distinctive sign recognizable at a distance,
 12 carry their arms openly, and abide by the law
 13 of war; or

14 “(C) a member of a regular armed force
 15 who professes allegiance to a government en-
 16 gaged in such hostilities, but not recognized by
 17 the United States.

18 “(4) **UNLAWFUL ENEMY COMBATANT.**—The
 19 term ‘unlawful enemy combatant’ means an indi-
 20 vidual engaged in hostilities against the United
 21 States who is not a lawful enemy combatant.

22 **“§ 948b. Military commissions generally**

23 “(a) **PURPOSE.**—This chapter establishes procedures
 24 governing the use of military commissions to try alien un-
 25 lawful enemy combatants engaged in hostilities against the

1 United States for violations of the law of war and other
 2 offenses triable by military commission.

3 “(b) CONSTRUCTION OF PROVISIONS.—The proce-
 4 dures for military commissions set forth in this chapter
 5 are based upon the procedures for trial by general courts-
 6 martial under chapter 47 of this title (the Uniform Code
 7 of Military Justice). Chapter 47 of this title does not, by
 8 its terms, apply to trial by military commission except as
 9 specifically provided therein or in this chapter, and many
 10 of the provisions of chapter 47 of this title are by their
 11 terms inapplicable to military commissions. The judicial
 12 construction and application of chapter 47 of this title,
 13 while instructive, is therefore not of its own force binding
 14 on military commissions established under this chapter.

15 “(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—
 16 (1) The following provisions of this title shall not apply
 17 to trial by military commission under this chapter:

18 “(A) Section 810 (article 10 of the Uniform
 19 Code of Military Justice), relating to speedy trial,
 20 including any rule of courts-martial relating to
 21 speedy trial.

22 “(B) Sections 831(a), (b), and (d) (articles
 23 31(a), (b), and (d) of the Uniform Code of Military
 24 Justice), relating to compulsory self-incrimination.

1 “(C) Section 832 (article 32 of the Uniform
2 Code of Military Justice), relating to pretrial inves-
3 tigation.

4 “(2) Other provisions of chapter 47 of this title shall
5 apply to trial by military commission under this chapter
6 only to the extent provided by the terms of such provisions
7 or by this chapter.

8 “(d) TREATMENT OF RULINGS AND PRECEDENTS.—
9 The findings, holdings, interpretations, and other prece-
10 dents of military commissions under this chapter may not
11 be introduced or considered in any hearing, trial, or other
12 proceeding of a court-martial convened under chapter 47
13 of this title. The findings, holdings, interpretations, and
14 other precedents of military commissions under this chap-
15 ter may not form the basis of any holding, decision, or
16 other determination of a court-martial convened under
17 that chapter.

18 **“§ 948c. Persons subject to military commissions**

19 “Any alien unlawful enemy combatant engaged in
20 hostilities or having supported hostilities against the
21 United States is subject to trial by military commission
22 as set forth in this chapter.

23 **“§ 948d. Jurisdiction of military commissions**

24 “A military commission under this chapter shall have
25 jurisdiction to try persons subject to this chapter for any

1 offense made punishable by this chapter, sections 904 and
 2 906 of this title (articles 104 and 106 of the Uniform Code
 3 of Military Justice), or the law of war, and may, under
 4 such limitations as the President may prescribe, adjudge
 5 any punishment not forbidden by this chapter, including
 6 the penalty of death when authorized under this chapter,
 7 chapter 47 of this title, or the law of war.

8 “SUBCHAPTER II—COMPOSITION OF MILITARY 9 COMMISSIONS

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judge of a military commission.

“948k. Detail of trial counsel and defense counsel.

“948l. Detail or employment of reporters and interpreters.

“948m. Number of members; excuse of members; absent and additional members.

10 **“§ 948h. Who may convene military commissions**

11 “Military commissions under this chapter may be
 12 convened by the Secretary of Defense or by any officer
 13 or official of the United States designated by the Secretary
 14 for that purpose.

15 **“§ 948i. Who may serve on military commissions**

16 “(a) IN GENERAL.—Any commissioned officer of the
 17 armed forces on active duty is eligible to serve on a mili-
 18 tary commission under this chapter, including commis-
 19 sioned officers of the reserve components of the armed
 20 forces on active duty, commissioned officers of the Na-

1 tional Guard on active duty in Federal service, or retired
 2 commissioned officers recalled to active duty.

3 “(b) DETAIL OF MEMBERS.—When convening a mili-
 4 tary commission under this chapter, the convening author-
 5 ity shall detail as members thereof such members of the
 6 armed forces eligible under subsection (a) who, as in the
 7 opinion of the convening authority, are best qualified for
 8 the duty by reason of age, education, training, experience,
 9 length of service, and judicial temperament. No member
 10 of an armed force is eligible to serve as a member of a
 11 military commission when such member is the accuser or
 12 a witness for the prosecution or has acted as an investi-
 13 gator or counsel in the same case.

14 “(c) EXCUSE OF MEMBERS.—Before a military com-
 15 mission under this chapter is assembled for the trial of
 16 a case, the convening authority may excuse a member
 17 from participating in the case.

18 **“§ 948j. Military judge of a military commission**

19 “(a) DETAIL OF MILITARY JUDGE.—A military judge
 20 shall be detailed to each military commission under this
 21 chapter. The Secretary of Defense shall prescribe regula-
 22 tions providing for the manner in which military judges
 23 are so detailed to military commissions. The military judge
 24 shall preside over each military commission to which he
 25 has been detailed.

1 “(b) ELIGIBILITY.—A military judge shall be a com-
2 missioned officer of the armed forces who is a member
3 of the bar of a Federal court, or a member of the bar
4 of the highest court of a State, and who is certified to
5 be qualified for duty under section 826 of this title (article
6 26 of the Uniform Code of Military Justice) as a military
7 judge in general courts-martial by the Judge Advocate
8 General of the armed force of which such military judge
9 is a member.

10 “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
11 person is eligible to act as military judge in a case of a
12 military commission under this chapter if he is the accuser
13 or a witness or has acted as investigator or a counsel in
14 the same case.

15 “(d) CONSULTATION WITH MEMBERS; INELIGI-
16 BILITY TO VOTE.—A military judge detailed to a military
17 commission under this chapter may not consult with the
18 members except in the presence of the accused (except as
19 otherwise provided in section 949d of this title), trial coun-
20 sel, and defense counsel, nor may he vote with the mem-
21 bers.

22 “(e) OTHER DUTIES.—A commissioned officer who
23 is certified to be qualified for duty as a military judge of
24 a military commission under this chapter may perform
25 such other duties as are assigned to him by or with the

1 approval of the Judge Advocate General of the armed
 2 force of which such officer is a member or the designee
 3 of such Judge Advocate General.

4 “(f) PROHIBITION ON EVALUATION OF FITNESS BY
 5 CONVENING AUTHORITY.—The convening authority of a
 6 military commission under this chapter shall not prepare
 7 or review any report concerning the effectiveness, fitness,
 8 or efficiency of a military judge detailed to the military
 9 commission which relates to his performance of duty as
 10 a military judge on the military commission.

11 **“§ 948k. Detail of trial counsel and defense counsel**

12 “(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial
 13 counsel and military defense counsel shall be detailed for
 14 each military commission under this chapter.

15 “(2) Assistant trial counsel and assistant and asso-
 16 ciate defense counsel may be detailed for a military com-
 17 mission under this chapter.

18 “(3) Military defense counsel for a military commis-
 19 sion under this chapter shall be detailed as soon as prac-
 20 ticable.

21 “(4) The Secretary of Defense shall prescribe regula-
 22 tions providing for the manner in which trial counsel and
 23 military defense counsel are detailed for military commis-
 24 sions under this chapter and for the persons who are au-

1 thorized to detail such counsel for such military commis-
 2 sions.

3 “(b) TRIAL COUNSEL.—Subject to subsection (e),
 4 trial counsel detailed for a military commission under this
 5 chapter must be—

6 “(1) a judge advocate (as that term is defined
 7 in section 801 of this title (article 1 of the Uniform
 8 Code of Military Justice)) who is—

9 “(A) a graduate of an accredited law
 10 school or is a member of the bar of a Federal
 11 court or of the highest court of a State; and

12 “(B) certified as competent to perform du-
 13 ties as trial counsel before general courts-mar-
 14 tial by the Judge Advocate General of the
 15 armed force of which he is a member; or

16 “(2) a civilian who is—

17 “(A) a member of the bar of a Federal
 18 court or of the highest court of a State; and

19 “(B) otherwise qualified to practice before
 20 the military commission pursuant to regulations
 21 prescribed by the Secretary of Defense.

22 “(c) MILITARY DEFENSE COUNSEL.—Subject to sub-
 23 section (e), military defense counsel detailed for a military
 24 commission under this chapter must be a judge advocate
 25 (as so defined) who is—

1 “(1) a graduate of an accredited law school or
2 is a member of the bar of a Federal court or of the
3 highest court of a State; and

4 “(2) certified as competent to perform duties as
5 defense counsel before general courts-martial by the
6 Judge Advocate General of the armed force of which
7 he is a member.

8 “(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUN-
9 SEL.—(1) The Chief Prosecutor in a military commission
10 under this chapter shall meet the requirements set forth
11 in subsection (b)(1).

12 “(2) The Chief Defense Counsel in a military com-
13 mission under this chapter shall meet the requirements set
14 forth in subsection (c)(1).

15 “(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
16 person who has acted as an investigator, military judge,
17 or member of a military commission under this chapter
18 in any case may act later as trial counsel or military de-
19 fense counsel in the same case. No person who has acted
20 for the prosecution before a military commission under
21 this chapter may act later in the same case for the de-
22 fense, nor may any person who has acted for the defense
23 before a military commission under this chapter act later
24 in the same case for the prosecution.

1 **“§ 948l. Detail or employment of reporters and inter-**
 2 **preters**

3 “(a) COURT REPORTERS.—Under such regulations
 4 as the Secretary of Defense may prescribe, the convening
 5 authority of a military commission under this chapter
 6 shall detail to or employ for the military commission quali-
 7 fied court reporters, who shall prepare a verbatim record
 8 of the proceedings of and testimony taken before the mili-
 9 tary commission.

10 “(b) INTERPRETERS.—Under such regulations as the
 11 Secretary of Defense may prescribe, the convening author-
 12 ity of a military commission under this chapter may detail
 13 to or employ for the military commission interpreters who
 14 shall interpret for the military commission, and, as nec-
 15 essary, for trial counsel and defense counsel for the mili-
 16 tary commission, and for the accused.

17 “(c) TRANSCRIPT; RECORD.—The transcript of a
 18 military commission under this chapter shall be under the
 19 control of the convening authority of the military commis-
 20 sion, who shall also be responsible for preparing the record
 21 of the proceedings of the military commission.

22 **“§ 948m. Number of members; excuse of members; ab-**
 23 **sent and additional members**

24 “(a) NUMBER OF MEMBERS.—(1) A military com-
 25 mission under this chapter shall, except as provided in
 26 paragraph (2), have at least five members.

1 “(2) In a case in which the accused before a military
 2 commission under this chapter may be sentenced to a pen-
 3 alty of death, the military commission shall have the num-
 4 ber of members prescribed by section 949m(c) of this title.

5 “(b) EXCUSE OF MEMBERS.—No member of a mili-
 6 tary commission under this chapter may be absent or ex-
 7 cused after the military commission has been assembled
 8 for the trial of a case unless excused—

9 “(1) as a result of challenge;

10 “(2) by the military judge for physical disability
 11 or other good cause; or

12 “(3) by order of the convening authority for
 13 good cause.

14 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-
 15 ever a military commission under this chapter is reduced
 16 below the number of members required by subsection (a),
 17 the trial may not proceed unless the convening authority
 18 details new members sufficient to provide not less than
 19 such number. The trial may proceed with the new mem-
 20 bers present after the recorded evidence previously intro-
 21 duced before the members has been read to the military
 22 commission in the presence of the military judge, the ac-
 23 cused (except as provided in section 949d of this title),
 24 and counsel for both sides.

1 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; statements obtained by torture
or cruel, inhuman, or degrading treatment.

“948s. Service of charges.

2 **“§ 948q. Charges and specifications**

3 “(a) CHARGES AND SPECIFICATIONS.—Charges and
4 specifications against an accused in a military commission
5 under this chapter shall be signed by a person subject to
6 chapter 47 of this title under oath before a commissioned
7 officer of the armed forces authorized to administer oaths
8 and shall state—

9 “(1) that the signer has personal knowledge of,
10 or reason to believe, the matters set forth therein;
11 and

12 “(2) that they are true in fact to the best of his
13 knowledge and belief.

14 “(b) NOTICE TO ACCUSED.—Upon the swearing of
15 the charges and specifications in accordance with sub-
16 section (a), the accused shall be informed of the charges
17 and specifications against him as soon as practicable.

18 **“§ 948r. Compulsory self-incrimination prohibited;**
19 **statements obtained by torture or cruel,**
20 **inhuman, or degrading treatment**

21 “(a) IN GENERAL.—No person shall be required to
22 testify against himself at a proceeding of a military com-
23 mission under this chapter.

1 “(b) STATEMENTS OBTAINED BY TORTURE OR
2 CRUEL, INHUMAN, OR DEGRADING TREATMENT.—A
3 statement obtained by use of torture or by cruel, inhuman,
4 or degrading treatment prohibited by section 1003 of the
5 Detainee Treatment Act of 2005 (42 U.S.C. 2000dd),
6 whether or not under color of law, shall not be admissible
7 in a military commission under this chapter, except
8 against a person accused of torture or such treatment as
9 evidence the statement was made.

10 “(c) STATEMENTS OBTAINED BY ALLEGED COER-
11 CION NOT AMOUNTING TO TORTURE OR CRUEL, INHU-
12 MAN, OR DEGRADING TREATMENT.—An otherwise admis-
13 sible statement obtained through the use of alleged coer-
14 cion not amounting to torture or cruel, inhuman, or de-
15 grading treatment prohibited by section 1003 of the De-
16 tainee Treatment Act of 2005 may be admitted in evidence
17 in a military commission under this chapter only if the
18 military judge finds that—

19 “(1) the totality of the circumstances under
20 which the statement was made render it reliable and
21 possessing sufficient probative value; and

22 “(2) the interests of justice would best be
23 served by admission of the statement into evidence.

1 **“§ 948s. Service of charges**

2 “The trial counsel assigned to a case before a military
3 commission under this chapter shall cause to be served
4 upon the accused and military defense counsel a copy of
5 the charges upon which trial is to be had in English and,
6 if appropriate, in another language that the accused un-
7 derstands, sufficiently in advance of trial to prepare a de-
8 fense.

9 **“SUBCHAPTER IV—TRIAL PROCEDURE**

“Sec.

“949a. Rules.

“949b. Unlawfully influencing action of military commission.

“949c. Duties of trial counsel and defense counsel.

“949d. Sessions.

“949e. Continuances.

“949f. Challenges.

“949g. Oaths.

“949h. Former jeopardy.

“949i. Pleas of the accused.

“949j. Opportunity to obtain witnesses and other evidence.

“949k. Defense of lack of mental responsibility.

“949l. Voting and rulings.

“949m. Number of votes required.

“949n. Military commission to announce action.

“949o. Record of trial.

10 **“§ 949a. Rules**

11 “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-
12 trial, trial, and post-trial procedures, including elements
13 and modes of proof, for cases triable by military commis-
14 sion under this chapter may be prescribed by the Secretary
15 of Defense. Such procedures may not be contrary to or
16 inconsistent with this chapter. Except as otherwise pro-
17 vided in this chapter or chapter 47 of this title, the proce-
18 dures and rules of evidence applicable in trials by general

1 courts-martial of the United States shall apply in trials
2 by military commission under this chapter.

3 “(b) EXCEPTIONS.—(1) The Secretary of Defense, in
4 consultation with the Attorney General, may make such
5 exceptions in the applicability in trials by military commis-
6 sion under this chapter from the procedures and rules of
7 evidence otherwise applicable in general courts-martial as
8 may be required by the unique circumstances of the con-
9 duct of military and intelligence operations during hos-
10 tilities or by other practical need.

11 “(2) Notwithstanding any exceptions authorized by
12 paragraph (1), the procedures and rules of evidence in
13 trials by military commission under this chapter shall in-
14 clude, at a minimum, the following rights:

15 “(A) To examine and respond to all evidence
16 considered by the military commission on the issue
17 of guilt or innocence and for sentencing.

18 “(B) To be present at all sessions of the mili-
19 tary commission (other than those for deliberations
20 or voting), except when excluded under section 949d
21 of this title.

22 “(C) To the assistance of counsel.

23 “(D) To self-representation, if the accused
24 knowingly and competently waives the assistance of
25 counsel, subject to the provisions of paragraph (4).

1 “(E) To the suppression of evidence that is not
2 reliable or probative.

3 “(F) To the suppression of evidence the pro-
4 bative value of which is substantially outweighed
5 by—

6 “(i) the danger of unfair prejudice, confu-
7 sion of the issues, or misleading the members;
8 or

9 “(ii) considerations of undue delay, waste
10 of time, or needless presentation of cumulative
11 evidence.

12 “(3) In making exceptions in the applicability in
13 trials by military commission under this chapter from the
14 procedures and rules otherwise applicable in general
15 courts-martial, the Secretary of Defense may provide the
16 following:

17 “(A) Evidence seized outside the United States
18 shall not be excluded from trial by military commis-
19 sion on the grounds that the evidence was not seized
20 pursuant to a search warrant or authorization.

21 “(B) A statement of the accused that is other-
22 wise admissible shall not be excluded from trial by
23 military commission on grounds of alleged coercion
24 or compulsory self-incrimination so long as the evi-

1 dence complies with the provisions of section 948r of
2 this title.

3 “(C) Evidence shall be admitted as authentic so
4 long as—

5 “(i) the military judge of the military com-
6 mission determines that there is sufficient evi-
7 dence that the evidence is what it is claimed to
8 be; and

9 “(ii) the military judge instructs the mem-
10 bers that they may consider any issue as to au-
11 thentication or identification of evidence in de-
12 termining the weight, if any, to be given to the
13 evidence.

14 “(D) Hearsay evidence not otherwise admissible
15 under the rules of evidence applicable in trial by
16 general courts-martial may be admitted in a trial by
17 military commission only if—

18 “(i) the proponent of the evidence makes
19 known to the adverse party, sufficiently in ad-
20 vance of trial or hearing to provide the adverse
21 party with a fair opportunity to meet the evi-
22 dence, the proponent’s intention to offer the
23 evidence, and the particulars of the evidence
24 (including information on the circumstances
25 under which the evidence was obtained); and

1 “(ii) the military judge finds that the total-
2 ity of the circumstances render the evidence
3 more probative on the point for which it is of-
4 fered than other evidence which the proponent
5 can procure through reasonable efforts, taking
6 into consideration the unique circumstances of
7 the conduct of military and intelligence oper-
8 ations during hostilities.

9 “(4)(A) The accused in a military commission under
10 this chapter who exercises the right to self-representation
11 under paragraph (2)(D) shall conform his deportment and
12 the conduct of the defense to the rules of evidence, proce-
13 dure, and decorum applicable to trials by military commis-
14 sion.

15 “(B) Failure of the accused to conform to the rules
16 described in subparagraph (A) may result in a partial or
17 total revocation by the military judge of the right of self-
18 representation under paragraph (2)(D). In such case, the
19 detailed defense counsel of the accused or an appropriately
20 authorized civilian counsel shall perform the functions nec-
21 essary for the defense.

22 “(c) DELEGATION OF AUTHORITY TO PRESCRIBE
23 REGULATIONS.—The Secretary of Defense may delegate
24 the authority of the Secretary to prescribe regulations
25 under this chapter.

1 **“§ 949b. Unlawfully influencing action of military**
2 **commission**

3 “(a) IN GENERAL.—(1) No authority convening a
4 military commission under this chapter may censure, rep-
5 rimand, or admonish the military commission, or any
6 member, military judge, or counsel thereof, with respect
7 to the findings or sentence adjudged by the military com-
8 mission, or with respect to any other exercises of its or
9 their functions in the conduct of the proceedings.

10 “(2) No person may attempt to coerce or, by any un-
11 authorized means, influence—

12 “(A) the action of a military commission under
13 this chapter, or any member thereof, in reaching the
14 findings or sentence in any case;

15 “(B) the action of any convening, approving, or
16 reviewing authority with respect to their judicial
17 acts; or

18 “(C) the exercise of professional judgment by
19 trial counsel or defense counsel.

20 “(3) The provisions of this subsection shall not apply
21 with respect to—

22 “(A) general instructional or informational
23 courses in military justice if such courses are de-
24 signed solely for the purpose of instructing members
25 of a command in the substantive and procedural as-
26 pects of military commissions; or

1 “(B) statements and instructions given in open
2 proceedings by a military judge or counsel.

3 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS
4 ON COMMISSION IN EVALUATION OF FITNESS.—In the
5 preparation of an effectiveness, fitness, or efficiency report
6 or any other report or document used in whole or in part
7 for the purpose of determining whether a commissioned
8 officer of the armed forces is qualified to be advanced in
9 grade, or in determining the assignment or transfer of any
10 such officer or whether any such officer should be retained
11 on active duty, no person may—

12 “(1) consider or evaluate the performance of
13 duty of any member of a military commission under
14 this chapter; or

15 “(2) give a less favorable rating or evaluation
16 to any commissioned officer because of the zeal with
17 which such officer, in acting as counsel, represented
18 any accused before a military commission under this
19 chapter.

20 **“§ 949c. Duties of trial counsel and defense counsel**

21 “(a) TRIAL COUNSEL.—The trial counsel of a mili-
22 tary commission under this chapter shall prosecute in the
23 name of the United States.

1 “(b) DEFENSE COUNSEL.—(1) The accused shall be
2 represented in his defense before a military commission
3 under this chapter as provided in this subsection.

4 “(2) The accused shall be represented by military
5 counsel detailed under section 948k of this title.

6 “(3) The accused may be represented by civilian
7 counsel if retained by the accused, provided that such civil-
8 ian counsel—

9 “(A) is a United States citizen;

10 “(B) is admitted to the practice of law in a
11 State, district, or possession of the United States, or
12 before a Federal court;

13 “(C) has not been the subject of any sanction
14 of disciplinary action by any court, bar, or other
15 competent governmental authority for relevant mis-
16 conduct;

17 “(D) has been determined to be eligible for ac-
18 cess to information classified at the level Secret or
19 higher; and

20 “(E) has signed a written agreement to comply
21 with all applicable regulations or instructions for
22 counsel, including any rules of court for conduct
23 during the proceedings.

24 “(4) If the accused is represented by civilian counsel,
25 military counsel detailed shall act as associate counsel.

1 “(5) The accused is not entitled to be represented by
 2 more than one military counsel. However, the person au-
 3 thorized under regulations prescribed under section 948k
 4 of this title to detail counsel, in such person’s sole discre-
 5 tion, may detail additional military counsel to represent
 6 the accused.

7 “(6) Defense counsel may cross-examine each witness
 8 for the prosecution who testifies before a military commis-
 9 sion under this chapter.

10 **“§ 949d. Sessions**

11 “(a) SESSIONS WITHOUT PRESENCE OF MEM-
 12 BERS.—(1) At any time after the service of charges which
 13 have been referred for trial by military commission under
 14 this chapter, the military judge may call the military com-
 15 mission into session without the presence of the members
 16 for the purpose of—

17 “(A) hearing and determining motions raising
 18 defenses or objections which are capable of deter-
 19 mination without trial of the issues raised by a plea
 20 of not guilty;

21 “(B) hearing and ruling upon any matter which
 22 may be ruled upon by the military judge under this
 23 chapter, whether or not the matter is appropriate for
 24 later consideration or decision by the members;

1 “(C) if permitted by regulations prescribed by
2 the Secretary of Defense, receiving the pleas of the
3 accused; and

4 “(D) performing any other procedural function
5 which may be performed by the military judge under
6 this chapter or under rules prescribed pursuant to
7 section 949a of this title and which does not require
8 the presence of the members.

9 “(2) Except as provided in subsections (b), (c), and
10 (d), any proceedings under paragraph (1) shall be con-
11 ducted in the presence of the accused, defense counsel, and
12 trial counsel, and shall be made part of the record.

13 “(b) DELIBERATION OR VOTE OF MEMBERS.—When
14 the members of a military commission under this chapter
15 deliberate or vote, only the members may be present.

16 “(c) CLOSURE OF PROCEEDINGS.—(1) The military
17 judge may close to the public all or part of the proceedings
18 of a military commission under this chapter.

19 “(2) The military judge may close to the public all
20 or a portion of the proceedings under paragraph (1) only
21 upon making a specific finding that such closure is nec-
22 essary to—

23 “(A) protect information the disclosure of which
24 could reasonably be expected to cause damage to the

1 national security, including intelligence or law en-
2 forcement sources, methods, or activities; or

3 “(B) ensure the physical safety of individuals.

4 “(3) A finding under paragraph (2) may be based
5 upon a presentation, including a presentation ex parte or
6 in camera, by either trial counsel or defense counsel.

7 “(4)(A) Subject to the provisions of this paragraph,
8 classified information shall be handled in accordance with
9 rules applicable in trials by general courts-martial of the
10 United States.

11 “(B) Classified information shall be protected and is
12 privileged from disclosure if disclosure would be detri-
13 mental to the national security. This subparagraph applies
14 to all stages of proceedings of military commissions under
15 this chapter.

16 “(C) After the original classification authority or
17 head of the agency concerned has certified in writing that
18 evidence and the sources thereof have been declassified to
19 the maximum extent possible, consistent with the require-
20 ments of national security, the military judge may, to the
21 extent practicable in accordance with the rules applicable
22 in trials by court-martial, authorize—

23 “(i) the deletion of specified items of classified
24 information from documents made available to the
25 accused;

1 “(ii) the substitution of a portion or summary
2 of the information for such classified documents; or

3 “(iii) the substitution of a statement admitting
4 relevant facts that the classified information would
5 tend to prove.

6 “(D) A claim of privilege under this paragraph, and
7 any materials in support thereof, shall, upon the request
8 of the Government, be considered by the military judge
9 in camera and shall not be disclosed to the accused.

10 “(d) EXCLUSION OF ACCUSED FROM CERTAIN PRO-
11 CEEDINGS.—The military judge may exclude the accused
12 from any portion of a proceeding upon a determination
13 that, after being warned by the military judge, the accused
14 persists in conduct that justifies exclusion from the court-
15 room—

16 “(1) to ensure the physical safety of individuals;
17 or

18 “(2) to prevent disruption of the proceedings by
19 the accused.

20 **“§ 949e. Continuances**

21 “The military judge in a military commission under
22 this chapter may, for reasonable cause, grant a continu-
23 ance to any party for such time, and as often, as may
24 appear to be just.

1 **“§ 949f. Challenges**

2 “(a) CHALLENGES AUTHORIZED.—The military
3 judge and members of a military commission under this
4 chapter may be challenged by the accused or trial counsel
5 for cause stated to the military commission. The military
6 judge shall determine the relevance and validity of chal-
7 lenges for cause, and may not receive a challenge to more
8 than one person at a time. Challenges by trial counsel
9 shall ordinarily be presented and decided before those by
10 the accused are offered.

11 “(b) PEREMPTORY CHALLENGES.—The accused and
12 trial counsel are each entitled to one peremptory challenge,
13 but the military judge may not be challenged except for
14 cause.

15 “(c) CHALLENGES AGAINST ADDITIONAL MEM-
16 BERS.—Whenever additional members are detailed to a
17 military commission under this chapter, and after any
18 challenges for cause against such additional members are
19 presented and decided, the accused and trial counsel are
20 each entitled to one peremptory challenge against mem-
21 bers not previously subject to peremptory challenge.

22 **“§ 949g. Oaths**

23 “(a) IN GENERAL.—(1) Before performing their re-
24 spective duties in a military commission under this chap-
25 ter, military judges, members, trial counsel, defense coun-

1 sel, reporters, and interpreters shall take an oath to per-
 2 form their duties faithfully.

3 “(2) The form of the oath required by paragraph (1),
 4 the time and place of the taking thereof, the manner of
 5 recording thereof, and whether the oath shall be taken for
 6 all cases in which duties are to be performed or for a par-
 7 ticular case, shall be as provided in regulations prescribed
 8 by the Secretary of Defense. The regulations may provide
 9 that—

10 “(A) an oath to perform faithfully duties as a
 11 military judge, trial counsel, or defense counsel may
 12 be taken at any time by any judge advocate or other
 13 person certified to be qualified or competent for the
 14 duty; and

15 “(B) if such an oath is taken, such oath need
 16 not again be taken at the time the judge advocate
 17 or other person is detailed to that duty.

18 “(b) WITNESSES.—Each witness before a military
 19 commission under this chapter shall be examined on oath.

20 “(c) OATH DEFINED.—In this section, the term
 21 ‘oath’ includes an affirmation.

22 **“§ 949h. Former jeopardy**

23 “(a) IN GENERAL.—No person may, without his con-
 24 sent, be tried by a military commission under this chapter
 25 a second time for the same offense.

1 “(b) SCOPE OF TRIAL.—No proceeding in which the
 2 accused has been found guilty by military commission
 3 under this chapter upon any charge or specification is a
 4 trial in the sense of this section until the finding of guilty
 5 has become final after review of the case has been fully
 6 completed.

7 **“§ 949i. Pleas of the accused**

8 “(a) PLEA OF NOT GUILTY.—If an accused in a mili-
 9 tary commission under this chapter after a plea of guilty
 10 sets up matter inconsistent with the plea, or if it appears
 11 that the accused has entered the plea of guilty through
 12 lack of understanding of its meaning and effect, or if the
 13 accused fails or refuses to plead, a plea of not guilty shall
 14 be entered in the record, and the military commission shall
 15 proceed as though the accused had pleaded not guilty.

16 “(b) FINDING OF GUILT AFTER GUILTY PLEA.—
 17 With respect to any charge or specification to which a plea
 18 of guilty has been made by the accused in a military com-
 19 mission under this chapter and accepted by the military
 20 judge, a finding of guilty of the charge or specification
 21 may be entered immediately without a vote. The finding
 22 shall constitute the finding of the military commission un-
 23 less the plea of guilty is withdrawn prior to announcement
 24 of the sentence, in which event the proceedings shall con-
 25 tinue as though the accused had pleaded not guilty.

1 **“§ 949j. Opportunity to obtain witnesses and other**
2 **evidence**

3 “(a) IN GENERAL.—(1) Defense counsel in a military
4 commission under this chapter shall have a reasonable op-
5 portunity to obtain witnesses and other evidence as pro-
6 vided in regulations prescribed by the Secretary of De-
7 fense.

8 “(2) Process issued in military commissions under
9 this chapter to compel witnesses to appear and testify and
10 to compel the production of other evidence—

11 “(A) shall be similar to that which courts of the
12 United States having criminal jurisdiction may law-
13 fully issue; and

14 “(B) shall run to any place where the United
15 States shall have jurisdiction thereof.

16 “(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—As
17 soon as practicable, trial counsel in a military commission
18 under this chapter shall disclose to the defense the exist-
19 ence of any known evidence that reasonably tends to excul-
20 pate or reduce the degree of guilt of the accused.

21 “(c) TREATMENT OF CERTAIN ITEMS.—In accord-
22 ance with the rules applicable in trials by general courts-
23 martial in the United States, and to the extent provided
24 in such rules, the military judge in a military commission
25 under this chapter may authorize trial counsel, in making

1 documents available to the accused pursuant to sub-
 2 sections (a) and (b)—

3 “(1) to delete specified items of classified infor-
 4 mation from such documents;

5 “(2) to substitute an unclassified summary of
 6 the classified information in such documents; or

7 “(3) to substitute an unclassified statement ad-
 8 mitting relevant facts that classified information in
 9 such documents would tend to prove.

10 **“§ 949k. Defense of lack of mental responsibility**

11 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative
 12 defense in a trial by military commission under this chap-
 13 ter that, at the time of the commission of the acts consti-
 14 tuting the offense, the accused, as a result of a severe
 15 mental disease or defect, was unable to appreciate the na-
 16 ture and quality or the wrongfulness of the acts. Mental
 17 disease or defect does not otherwise constitute a defense.

18 “(b) BURDEN OF PROOF.—The accused in a military
 19 commission under this chapter has the burden of proving
 20 the defense of lack of mental responsibility by clear and
 21 convincing evidence.

22 “(c) FINDINGS FOLLOWING ASSERTION OF DE-
 23 FENSE.—Whenever lack of mental responsibility of the ac-
 24 cused with respect to an offense is properly at issue in
 25 a military commission under this chapter, the military

1 judge shall instruct the members as to the defense of lack
 2 of mental responsibility under this section and shall
 3 charge the members to find the accused—

4 “(1) guilty;

5 “(2) not guilty; or

6 “(3) subject to subsection (d), not guilty by rea-
 7 son of lack of mental responsibility.

8 “(d) MAJORITY VOTE REQUIRED FOR FINDING.—

9 The accused shall be found not guilty by reason of lack
 10 of mental responsibility under subsection (c)(3) only if a
 11 majority of the members present at the time the vote is
 12 taken determines that the defense of lack of mental re-
 13 sponsibility has been established.

14 **“§ 949I. Voting and rulings**

15 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting
 16 by members of a military commission under this chapter
 17 on the findings and on the sentence shall be by secret writ-
 18 ten ballot.

19 “(b) RULINGS.—(1) The military judge in a military
 20 commission under this chapter shall rule upon all ques-
 21 tions of law, including the admissibility of evidence and
 22 all interlocutory questions arising during the proceedings.

23 “(2) Any ruling made by the military judge upon a
 24 question of law or an interlocutory question (other than
 25 the factual issue of mental responsibility of the accused)

1 is conclusive and constitutes the ruling of the military
 2 commission. However, a military judge may change his
 3 ruling at any time during the trial.

4 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote
 5 is taken of the findings of a military commission under
 6 this chapter, the military judge shall, in the presence of
 7 the accused and counsel, instruct the members as to the
 8 elements of the offense and charge the members—

9 “(1) that the accused must be presumed to be
 10 innocent until his guilt is established by legal and
 11 competent evidence beyond a reasonable doubt;

12 “(2) that in the case being considered, if there
 13 is a reasonable doubt as to the guilt of the accused,
 14 the doubt must be resolved in favor of the accused
 15 and he must be acquitted;

16 “(3) that, if there is reasonable doubt as to the
 17 degree of guilt, the finding must be in a lower de-
 18 gree as to which there is no reasonable doubt; and

19 “(4) that the burden of proof to establish the
 20 guilt of the accused beyond a reasonable doubt is
 21 upon the United States.

22 **“§ 949m. Number of votes required**

23 “(a) CONVICTION.—No person may be convicted by
 24 a military commission under this chapter of any offense,
 25 except as provided in section 949i(b) of this title or by

1 concurrence of two-thirds of the members present at the
2 time the vote is taken.

3 “(b) SENTENCES.—(1) Except as provided in para-
4 graphs (2) and (3), sentences shall be determined by a
5 military commission by the concurrence of two-thirds of
6 the members present at the time the vote is taken.

7 “(2) No person may be sentenced to death by a mili-
8 tary commission, except insofar as—

9 “(A) the penalty of death has been expressly
10 authorized under this chapter, chapter 47 of this
11 title, or the law of war for an offense of which the
12 accused has been found guilty;

13 “(B) trial counsel expressly sought the penalty
14 of death by filing an appropriate notice in advance
15 of trial;

16 “(C) the accused was convicted of the offense
17 by the concurrence of all the members present at the
18 time the vote is taken; and

19 “(D) all members present at the time the vote
20 was taken concurred in the sentence of death.

21 “(3) No person may be sentenced to life imprison-
22 ment, or to confinement for more than 10 years, by a mili-
23 tary commission under this chapter except by the concur-
24 rence of three-fourths of the members present at the time
25 the vote is taken.

1 “(c) NUMBER OF MEMBERS REQUIRED FOR PEN-
 2 ALTY OF DEATH.—(1) Except as provided in paragraph
 3 (2), in a case in which the penalty of death is sought, the
 4 number of members of the military commission under this
 5 chapter shall be not less than 12 members.

6 “(2) In any case described in paragraph (1) in which
 7 12 members are not reasonably available for a military
 8 commission because of physical conditions or military ex-
 9 igencies, the convening authority shall specify a lesser
 10 number of members for the military commission (but not
 11 fewer than 5 members), and the military commission may
 12 be assembled, and the trial held, with not less than the
 13 number of members so specified. In any such case, the
 14 convening authority shall make a detailed written state-
 15 ment, to be appended to the record, stating why a greater
 16 number of members were not reasonably available.

17 **“§ 949n. Military commission to announce action**

18 “A military commission under this chapter shall an-
 19 nounce its findings and sentence to the parties as soon
 20 as determined.

21 **“§ 949o. Record of trial**

22 “(a) RECORD; AUTHENTICATION.—Each military
 23 commission under this chapter shall keep a separate, ver-
 24 batim, record of the proceedings in each case brought be-
 25 fore it, and the record shall be authenticated by the signa-

1 ture of the military judge. If the record cannot be authen-
 2 ticated by the military judge by reason of his death, dis-
 3 ability, or absence, it shall be authenticated by the signa-
 4 ture of the trial counsel or by a member if the trial counsel
 5 is unable to authenticate it by reason of his death, dis-
 6 ability, or absence. Where appropriate, and as provided
 7 in regulations prescribed by the Secretary of Defense, the
 8 record of a military commission under this chapter may
 9 contain a classified annex.

10 “(b) COMPLETE RECORD REQUIRED.—A complete
 11 record of the proceedings and testimony shall be prepared
 12 in every military commission under this chapter.

13 “(c) PROVISION OF COPY TO ACCUSED.—A copy of
 14 the record of the proceedings of the military commission
 15 under this chapter shall be given the accused as soon as
 16 it is authenticated. If the record contains classified infor-
 17 mation, or a classified annex, the accused shall receive a
 18 redacted version of the record consistent with the require-
 19 ments of section 949d(c)(4) of this title. Defense counsel
 20 shall have access to the unredacted record, as provided
 21 in regulations prescribed by the Secretary of Defense.

22 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

1 **“§ 949s. Cruel or unusual punishments prohibited**

2 “Punishment by flogging, or by branding, marking,
3 or tattooing on the body, or any other cruel or unusual
4 punishment, may not be adjudged by a military commis-
5 sion under this chapter or inflicted under this chapter
6 upon any person subject to this chapter. The use of irons,
7 single or double, except for the purpose of safe custody,
8 is prohibited under this chapter.

9 **“§ 949t. Maximum limits**

10 “The punishment which a military commission under
11 this chapter may direct for an offense may not exceed such
12 limits as the President or Secretary of Defense may pre-
13 scribe for that offense.

14 **“§ 949u. Execution of confinement**

15 “(a) IN GENERAL.—Under such regulations as the
16 Secretary of Defense may prescribe, a sentence of confine-
17 ment adjudged by a military commission under this chap-
18 ter may be carried into execution by confinement—

19 “(1) in any place of confinement under the con-
20 trol of any of the armed forces; or

21 “(2) in any penal or correctional institution
22 under the control of the United States or its allies,
23 or which the United States may be allowed to use.

24 “(b) TREATMENT DURING CONFINEMENT BY OTHER
25 THAN THE ARMED FORCES.—Persons confined under
26 subsection (a)(2) in a penal or correctional institution not

1 under the control of an armed force are subject to the
 2 same discipline and treatment as persons confined or com-
 3 mitted by the courts of the United States or of the State,
 4 District of Columbia, or place in which the institution is
 5 situated.

6 “SUBCHAPTER VI—POST-TRIAL PROCEDURE
 7 AND REVIEW OF MILITARY COMMISSIONS

“Sec.

“950a. Error of law; lesser included offense.

“950b. Review by the convening authority.

“950c. Waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

“950f. Review by United States Court of Appeals for the Armed Forces and Su-
 preme Court.

“950g. Appellate counsel

“950h. Execution of sentence; suspension of sentence.

“950i. Finality of proceedings, findings, and sentences.

8 **“§ 950a. Error of law; lesser included offense**

9 “(a) ERROR OF LAW.—A finding or sentence of a
 10 military commission under this chapter may not be held
 11 incorrect on the ground of an error of law unless the error
 12 materially prejudices the substantial rights of the accused.

13 “(b) LESSER INCLUDED OFFENSE.—Any reviewing
 14 authority with the power to approve or affirm a finding
 15 of guilty by a military commission under this chapter may
 16 approve or affirm, instead, so much of the finding as in-
 17 cludes a lesser included offense.

18 **“§ 950b. Review by the convening authority**

19 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-
 20 INGS AND SENTENCE.—The findings and sentence of a

1 military commission under this chapter shall be reported
2 in writing promptly to the convening authority after the
3 announcement of the sentence.

4 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO CON-
5 VENING AUTHORITY.—(1) The accused may submit to the
6 convening authority matters for consideration by the con-
7 vening authority with respect to the findings and the sen-
8 tence of the military commission under this chapter.

9 “(2)(A) Except as provided in subparagraph (B), a
10 submittal under paragraph (1) shall be made in writing
11 within 20 days after accused has been give an authenti-
12 cated record of trial under section 949o(c) of this title.

13 “(B) If the accused shows that additional time is re-
14 quired for the accused to make a submittal under para-
15 graph (1), the convening authority may, for good cause,
16 extend the applicable period under subparagraph (A) for
17 not more than an additional 20 days.

18 “(3) The accused may waive his right to make a sub-
19 mittal to the convening authority under paragraph (1).
20 Such a waiver shall be made in writing, and may not be
21 revoked. For the purposes of subsection (c)(2), the time
22 within which the accused may make a submittal under this
23 subsection shall be deemed to have expired upon the sub-
24 mittal of a waiver under this paragraph to the convening
25 authority.

1 “(c) ACTION BY CONVENING AUTHORITY.—(1) The
2 authority under this subsection to modify the findings and
3 sentence of a military commission under this chapter is
4 a matter of the sole discretion and prerogative of the con-
5 vening authority.

6 “(2) The convening authority is not required to take
7 action on the findings of a military commission under this
8 chapter. If the convening authority takes action on the
9 findings, the convening authority may, in his sole discre-
10 tion, only—

11 “(A) dismiss any charge or specification by set-
12 ting aside a finding of guilty thereto; or

13 “(B) change a finding of guilty to a charge to
14 a finding of guilty to an offense that is a lesser in-
15 cluded offense of the offense stated in the charge.

16 “(3)(A) The convening authority shall take action on
17 the sentence of a military commission under this chapter.

18 “(B) Subject to regulations prescribed by the Sec-
19 retary of Defense, action under this paragraph may be
20 taken only after consideration of any matters submitted
21 by the accused under subsection (b) or after the time for
22 submitting such matters expires, whichever is earlier.

23 “(C) In taking action under this paragraph, the con-
24 vening authority may, in his sole discretion, approve, dis-
25 approve, commute, or suspend the sentence in whole or

1 in part. The convening authority may not increase a sen-
 2 tence beyond that which is found by the military commis-
 3 sion.

4 “(4) The convening authority shall serve on the ac-
 5 cused or on defense counsel notice of any action taken by
 6 the convening authority under this subsection.

7 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-
 8 ject to paragraphs (2) and (3), the convening authority
 9 of a military commission under this chapter may, in his
 10 sole discretion, order a proceeding in revision or a rehear-
 11 ing.

12 “(2)(A) Except as provided in subparagraph (B), a
 13 proceeding in revision may be ordered by the convening
 14 authority if—

15 “(i) there is an apparent error or omission in
 16 the record; or

17 “(ii) the record shows improper or inconsistent
 18 action by the military commission with respect to
 19 the findings or sentence that can be rectified without
 20 material prejudice to the substantial rights of the
 21 accused.

22 “(B) In no case may a proceeding in revision—

23 “(i) reconsider a finding of not guilty of a spec-
 24 ification or a ruling which amounts to a finding of
 25 not guilty;

1 “(ii) reconsider a finding of not guilty of any
 2 charge, unless there has been a finding of guilty
 3 under a specification laid under that charge, which
 4 sufficiently alleges a violation; or

5 “(iii) increase the severity of the sentence un-
 6 less the sentence prescribed for the offense is man-
 7 datory.

8 “(3) A rehearing may be ordered by the convening
 9 authority if the convening authority disapproves the find-
 10 ings and sentence and states the reasons for disapproval
 11 of the findings. If the convening authority disapproves the
 12 finding and sentence and does not order a rehearing, the
 13 convening authority shall dismiss the charges. A rehearing
 14 as to the findings may not be ordered by the convening
 15 authority when there is a lack of sufficient evidence in the
 16 record to support the findings. A rehearing as to the sen-
 17 tence may be ordered by the convening authority if the
 18 convening authority disapproves the sentence.

19 **“§ 950c. Waiver or withdrawal of appeal**

20 “(a) WAIVER OF RIGHT OF REVIEW.—(1) An ac-
 21 cused may file with the convening authority a statement
 22 expressly waiving the right of the accused to appellate re-
 23 view by the United States Court of Appeals for the Armed
 24 Forces under section 950f(a) of this title of the final deci-
 25 sion of the military commission under this chapter.

1 “(2) A waiver under paragraph (1) shall be signed
2 by both the accused and a defense counsel.

3 “(3) A waiver under paragraph (1) must be filed, if
4 at all, within 10 days after notice of the action is served
5 on the accused or on defense counsel under section
6 950b(c)(4) of this title. The convening authority, for good
7 cause, may extend the period for such filing by not more
8 than 30 days.

9 “(b) WITHDRAWAL OF APPEAL.—Except in a case in
10 which the sentence as approved under section 950b of this
11 title extends to death, the accused may withdraw an ap-
12 peal at any time.

13 “(c) EFFECT OF WAIVER OR WITHDRAWAL.—A
14 waiver of the right to appellate review or the withdrawal
15 of an appeal under this section bars review under section
16 950f of this title.

17 **“§ 950d. Appeal by the United States**

18 “(a) INTERLOCUTORY APPEAL.—(1) Except as pro-
19 vided in paragraph (2), in a trial by military commission
20 under this chapter, the United States may take an inter-
21 locutory appeal to the United States Court of Appeals for
22 the Armed Forces under section 950f of this title of any
23 order or ruling of the military judge that—

24 “(A) terminates proceedings of the military
25 commission with respect to a charge or specification;

1 “(B) excludes evidence that is substantial proof
2 of a fact material in the proceeding; or

3 “(C) relates to a matter under subsection (c) or
4 (d) of section 949d of this title.

5 “(2) The United States may not appeal under para-
6 graph (1) an order or ruling that is, or amounts to, a find-
7 ing of not guilty by the military commission with respect
8 to a charge or specification.

9 “(b) NOTICE OF APPEAL.—The United States shall
10 take an appeal of an order or ruling under subsection (a)
11 by filing a notice of appeal with the military judge within
12 five days after the date of the order or ruling.

13 “(c) APPEAL.—An appeal under this section shall be
14 forwarded, by means specified in regulations prescribed
15 the Secretary of Defense, directly to the United States
16 Court of Appeals for the Armed Forces. In ruling on an
17 appeal under this section, the Court may act only with
18 respect to matters of law.

19 **“§ 950e. Rehearings**

20 “(a) COMPOSITION OF MILITARY COMMISSION FOR
21 REHEARING.—Each rehearing under this chapter shall
22 take place before a military commission under this chapter
23 composed of members who were not members of the mili-
24 tary commission which first heard the case.

1 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-
2 ing—

3 “(A) the accused may not be tried for any of-
4 fense of which he was found not guilty by the first
5 military commission; and

6 “(B) no sentence in excess of or more than the
7 original sentence may be imposed unless—

8 “(i) the sentence is based upon a finding
9 of guilty of an offense not considered upon the
10 merits in the original proceedings; or

11 “(ii) the sentence prescribed for the of-
12 fense is mandatory.

13 “(2) Upon a rehearing, if the sentence approved after
14 the first military commission was in accordance with a
15 pretrial agreement and the accused at the rehearing
16 changes his plea with respect to the charges or specifica-
17 tions upon which the pretrial agreement was based, or oth-
18 erwise does not comply with pretrial agreement, the sen-
19 tence as to those charges or specifications may include any
20 punishment not in excess of that lawfully adjudged at the
21 first military commission.

22 **“§ 950f. Review by United States Court of Appeals for**
23 **the Armed Forces and Supreme Court**

24 “(a) REVIEW BY UNITED STATES COURT OF AP-
25 PEALS FOR THE ARMED FORCES.—(1) Subject to the pro-

visions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

“(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

“(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

“(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

“(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

“(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection

1 shall be governed by the provisions of section 1005(e)(3)
 2 of the Detainee Treatment Act of 2005 (42 U.S.C. 801
 3 note).

4 “(b) REVIEW BY SUPREME COURT.—The Supreme
 5 Court of the United States may review by writ of certiorari
 6 pursuant to section 1257 of title 28 the final judgment
 7 of the United States Court of Appeals for the Armed
 8 Forces in a determination under subsection (a).

9 **“§ 950g. Appellate counsel**

10 “(a) APPOINTMENT.—The Secretary of Defense
 11 shall, by regulation, establish procedures for the appoint-
 12 ment of appellate counsel for the United States and for
 13 the accused in military commissions under this chapter.
 14 Appellate counsel shall meet the qualifications of counsel
 15 for appearing before military commissions under this
 16 chapter.

17 “(b) REPRESENTATION OF UNITED STATES.—Appel-
 18 late counsel may represent the United States in any ap-
 19 peal or review proceeding under this chapter. Appellate
 20 Government counsel may represent the United States be-
 21 fore the Supreme Court in case arising under this chapter
 22 when requested to do so by the Attorney General.

23 “(c) REPRESENTATION OF ACCUSED.—The accused
 24 shall be represented before the United States Court of Ap-
 25 peals for the Armed Forces or the Supreme Court by mili-

1 tary appellate counsel, or by civilian counsel if retained
2 by him.

3 **“§ 950h. Execution of sentence; suspension of sen-**
4 **tence**

5 “(a) EXECUTION OF SENTENCE OF DEATH ONLY
6 UPON APPROVAL BY THE PRESIDENT.—If the sentence
7 of a military commission under this chapter extends to
8 death, that part of the sentence providing for death may
9 not be executed until approved by the President. In such
10 a case, the President may commute, remit, or suspend the
11 sentence, or any part thereof, as he sees fit.

12 “(b) EXECUTION OF SENTENCE OF DEATH ONLY
13 UPON FINAL JUDGMENT OF LEGALITY OF PRO-
14 CEEDINGS.—(1) If the sentence of a military commission
15 under this chapter extends to death, the sentence may not
16 be executed until there is a final judgement as to the legal-
17 ity of the proceedings (and with respect to death, approval
18 under subsection (a)).

19 “(2) A judgement as to legality of proceedings is final
20 for purposes of paragraph (1) when—

21 “(A) the time for the accused to file a petition
22 for review by the United States Court of Appeals for
23 the Armed Forces has expired and the accused has
24 not filed a timely petition for such review and the
25 case is not otherwise under review by the Court; or

1 “(B) review is completed in accordance with the
 2 judgment of the United States Court of Appeals for
 3 the Armed Forces and (A) a petition for a writ of
 4 certiorari is not timely filed, (B) such a petition is
 5 denied by the Supreme Court, or (C) review is other-
 6 wise completed in accordance with the judgment of
 7 the Supreme Court.

8 “(c) SUSPENSION OF SENTENCE.—The Secretary of
 9 the Defense, or the convening authority acting on the case
 10 (if other than the Secretary), may suspend the execution
 11 of any sentence or part thereof in the case, except a sen-
 12 tence of death.

13 **“§ 950i. Finality of proceedings, findings, and sen-**
 14 **tences**

15 “(a) FINALITY.—The appellate review of records of
 16 trial provided by this chapter, and the proceedings, find-
 17 ings, and sentences of military commissions as approved,
 18 reviewed, or affirmed as required by this chapter, are final
 19 and conclusive. Orders publishing the proceedings of mili-
 20 tary commissions under this chapter are binding upon all
 21 departments, courts, agencies, and officers of the United
 22 States, except as otherwise provided by the President.

23 “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-
 24 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-
 25 TIONS.—Except as otherwise provided in this chapter and

1 notwithstanding any other provision of law (including sec-
 2 tion 2241 of title 28 or any other habeas corpus provi-
 3 sion), no court, justice, or judge shall have jurisdiction to
 4 hear or consider any claim or cause of action whatsoever,
 5 including any action pending on or filed after the date of
 6 enactment of this chapter, relating to the prosecution,
 7 trial, or judgment of a military commission under this
 8 chapter, including challenges to the lawfulness of proce-
 9 dures of military commissions under this chapter.

10 “SUBCHAPTER VII—PUNITIVE MATTERS

“Sec.

“950aa. Definitions; construction of certain offenses; common circumstances.

“950bb. Principals.

“950cc. Accessory after the fact.

“950dd. Conviction of lesser offenses.

“950ee. Attempts.

“950ff. Conspiracy.

“950gg. Solicitation.

“950hh. Murder of protected persons.

“950ii. Attacking civilians.

“950jj. Attacking civilian objects.

“950kk. Attacking protected property.

“950ll. Pillaging.

“950mm. Denying quarter.

“950nn. Taking hostages.

“950oo. Employing poison or similar weapons.

“950pp. Using protected persons as a shield.

“950qq. Using protected property as a shield.

“950rr. Torture.

“950ss. Cruel, unusual, or inhumane treatment or punishment.

“950tt. Intentionally causing serious bodily injury.

“950uu. Mutilating or maiming.

“950vv. Murder in violation of the law of war.

“950ww. Destruction of property in violation of the law of war.

“950xx. Using treachery or perfidy.

“950yy. Improperly using a flag of truce.

“950zz. Improperly using a distinctive emblem.

“950aaa. Intentionally mistreating a dead body.

“950bbb. Rape.

“950ccc. Hijacking or hazarding a vessel or aircraft.

“950ddd. Terrorism.

“950eee. Providing material support for terrorism.

“950fff. Wrongfully aiding the enemy.

“950ggg. Spying.

“950hhh. Contempt.

“950iii. Perjury and obstruction of justice.

1 **“§ 950aa. Definitions; construction of certain offenses;**
 2 **common circumstances**

3 “(a) DEFINITIONS.—In this subchapter:

4 “(1) The term ‘military objective’ means com-
 5 batants and those objects during an armed conflict
 6 which, by their nature, location, purpose, or use, ef-
 7 fectively contribute to the war-fighting or war-sus-
 8 taining capability of an opposing force and whose
 9 total or partial destruction, capture, or neutraliza-
 10 tion would constitute a definite military advantage
 11 to the attacker under the circumstances at the time
 12 of an attack.

13 “(2) The term ‘protected person’ means any
 14 person entitled to protection under one or more of
 15 the Geneva Conventions, including civilians not tak-
 16 ing an active part in hostilities, military personnel
 17 placed out of combat by sickness, wounds, or deten-
 18 tion, and military medical or religious personnel.

19 “(3) The term ‘protected property’ means any
 20 property specifically protected by the law of war, in-
 21 cluding buildings dedicated to religion, education,
 22 art, science, or charitable purposes, historic monu-
 23 ments, hospitals, and places where the sick and
 24 wounded are collected, but only if and to the extent

1 such property is not being used for military purposes
 2 or is not otherwise a military objective. The term in-
 3 cludes objects properly identified by one of the dis-
 4 tinctive emblems of the Geneva Conventions, but
 5 does not include civilian property that is a military
 6 objective.

7 “(b) CONSTRUCTION OF CERTAIN OFFENSES.—The
 8 intent required for offenses under sections 950hh, 950ii,
 9 950jj, 950kk, and 950ss of this title precludes their appli-
 10 cability with regard to collateral damage or to death, dam-
 11 age, or injury incident to a lawful attack.

12 “(c) COMMON CIRCUMSTANCES.—An offense speci-
 13 fied in this subchapter is triable by military commission
 14 under this chapter only if the offense is committed in the
 15 context of and associated with armed conflict.

16 **“§ 950bb. Principals**

17 “Any person punishable under this chapter who—

18 “(1) commits an offense punishable by this
 19 chapter, or aids, abets, counsels, commands, or pro-
 20 cures its commission; or

21 “(2) causes an act to be done which if directly
 22 performed by him would be punishable by this chap-
 23 ter,

24 is a principal.

1 **“§ 950cc. Accessory after the fact**

2 “Any person subject to this chapter who, knowing
3 that an offense punishable by this chapter has been com-
4 mitted, receives, comforts, or assists the offender in order
5 to hinder or prevent his apprehension, trial, or punishment
6 shall be punished as a military commission under this
7 chapter may direct.

8 **“§ 950dd. Conviction of lesser offenses**

9 “An accused may be found guilty of an offense nec-
10 essarily included in the offense charged or of an attempt
11 to commit either the offense charged or an attempt to
12 commit either the offense charged or an offense nec-
13 essarily included therein.

14 **“§ 950ee. Attempts**

15 “(a) IN GENERAL.—Any person subject to this chap-
16 ter who attempts to commit any offense punishable by this
17 chapter shall be punished as a military commission under
18 this chapter may direct.

19 “(b) SCOPE OF OFFENSE.—An act, done with spe-
20 cific intent to commit an offense under this chapter,
21 amounting to more than mere preparation and tending,
22 even though failing, to effect its commission, is an attempt
23 to commit that offense.

24 “(c) EFFECT OF CONSUMMATION.—Any person sub-
25 ject to this chapter may be convicted of an attempt to com-

1 mit an offense although it appears on the trial that the
 2 offense was consummated.

3 **“§ 950ff. Conspiracy**

4 “Any person subject to this chapter who conspires to
 5 commit one or more substantive offenses triable by mili-
 6 tary commission under this subchapter, and who know-
 7 ingly does any overt act to effect the object of the con-
 8 spiracy, shall be punished, if death results to one or more
 9 of the victims, by death or such other punishment as a
 10 military commission under this chapter may direct, and,
 11 if death does not result to any of the victims, by such pun-
 12 ishment, other than death, as a military commission under
 13 this chapter may direct.

14 **“§ 950gg. Solicitation**

15 “Any person subject to this chapter who solicits or
 16 advises another or others to commit one or more sub-
 17 stantive offenses triable by military commission under this
 18 chapter shall, if the offense solicited or advised is at-
 19 tempted or committed, be punished with the punishment
 20 provided for the commission of the offense, but, if the of-
 21 fense solicited or advised is not committed or attempted,
 22 he shall be punished as a military commission under this
 23 chapter may direct.

1 **“§ 950hh. Murder of protected persons**

2 “Any person subject to this chapter who intentionally
3 kills one or more protected persons shall be punished by
4 death or such other punishment as a military commission
5 under this chapter may direct.

6 **“§ 950ii. Attacking civilians**

7 “Any person subject to this chapter who intentionally
8 engages in an attack upon a civilian population as such,
9 or individual civilians not taking active part in hostilities,
10 shall be punished, if death results to one or more of the
11 victims, by death or such other punishment as a military
12 commission under this chapter may direct, and, if death
13 does not result to any of the victims, by such punishment,
14 other than death, as a military commission under this
15 chapter may direct.

16 **“§ 950jj. Attacking civilian objects**

17 “Any person subject to this chapter who intentionally
18 engages in an attack upon a civilian object that is not a
19 military objective shall be punished as a military commis-
20 sion under this chapter may direct.

21 **“§ 950kk. Attacking protected property**

22 “Any person subject to this chapter who intentionally
23 engages in an attack upon protected property shall be pun-
24 ished as a military commission under this chapter may
25 direct.

1 **“§ 950ll. Pillaging**

2 “Any person subject to this chapter who intentionally
3 and in the absence of military necessity appropriates or
4 seizes property for private or personal use, without the
5 consent of a person with authority to permit such appro-
6 priation or seizure, shall be punished as a military com-
7 mission under this chapter may direct.

8 **“§ 950mm. Denying quarter**

9 “Any person subject to this chapter who, with effec-
10 tive command or control over subordinate groups, de-
11 clares, orders, or otherwise indicates to those groups that
12 there shall be no survivors or surrender accepted, with the
13 intent to threaten an adversary or to conduct hostilities
14 such that there would be no survivors or surrender accept-
15 ed, shall be punished as a military commission under this
16 chapter may direct.

17 **“§ 950nn. Taking hostages**

18 “Any person subject to this chapter who, having
19 knowingly seized or detained one or more persons, threat-
20 ens to kill, injure, or continue to detain such person or
21 persons with the intent of compelling any nation, person
22 other than the hostage, or group of persons to act or re-
23 frain from acting as an explicit or implicit condition for
24 the safety or release of such person or persons, shall be
25 punished, if death results to one or more of the victims,
26 by death or such other punishment as a military commis-

1 sion under this chapter may direct, and, if death does not
 2 result to any of the victims, by such punishment, other
 3 than death, as a military commission under this chapter
 4 may direct.

5 **“§ 950oo. Employing poison or similar weapons**

6 “Any person subject to this chapter who inten-
 7 tionally, as a method of warfare, employs a substance or
 8 weapon that releases a substance that causes death or se-
 9 rious and lasting damage to health in the ordinary course
 10 of events, through its asphyxiating, bacteriological, or
 11 toxic properties, shall be punished, if death results to one
 12 or more of the victims, by death or such other punishment
 13 as a military commission under this chapter may direct,
 14 and, if death does not result to any of the victims, by such
 15 punishment, other than death, as a military commission
 16 under this chapter may direct.

17 **“§ 950pp. Using protected persons as a shield**

18 “Any person subject to this chapter who positions,
 19 or otherwise takes advantage of, a protected person with
 20 the intent to shield a military objective from attack. or
 21 to shield, favor, or impede military operations, shall be
 22 punished, if death results to one or more of the victims,
 23 by death or such other punishment as a military commis-
 24 sion under this chapter may direct, and, if death does not
 25 result to any of the victims, by such punishment, other

1 than death, as a military commission under this chapter
 2 may direct.

3 **“§ 950qq. Using protected property as a shield**

4 “Any person subject to this chapter who positions,
 5 or otherwise takes advantage of the location of, protected
 6 property with the intent to shield a military objective from
 7 attack, or to shield, favor, or impede military operations,
 8 shall be punished as a military commission under this
 9 chapter may direct.

10 **“§ 950rr. Torture**

11 “(a) OFFENSE.—Any person subject to this chapter
 12 who commits an act specifically intended to inflict severe
 13 physical or mental pain or suffering (other than pain or
 14 suffering incidental to lawful sanctions) upon another per-
 15 son within his custody or physical control for the purpose
 16 of obtaining information or a confession, punishment, in-
 17 timidation, coercion, or any reason based on discrimina-
 18 tion of any kind, shall be punished, if death results to one
 19 or more of the victims, by death or such other punishment
 20 as a military commission under this chapter may direct,
 21 and, if death does not result to any of the victims, by such
 22 punishment, other than death, as a military commission
 23 under this chapter may direct.

24 “(b) SEVERE MENTAL PAIN OR SUFFERING DE-
 25 FINED.—In this section, the term ‘severe mental pain or

1 suffering’ has the meaning given that term in section
 2 2340(2) of title 18.

3 **“§ 950ss. Cruel, unusual, or inhumane treatment or**
 4 **punishment**

5 “Any person subject to this chapter who subjects an-
 6 other person in their custody or under their physical con-
 7 trol, regardless of nationality or physical location, to cruel,
 8 unusual, or inhumane treatment or punishment prohibited
 9 by the Fifth, Eighth, and 14th Amendments to the Con-
 10 stitution of the United States shall be punished, if death
 11 results to the victim, by death or such other punishment
 12 as a military commission under this chapter may direct,
 13 and, if death does not result to the victim, by such punish-
 14 ment, other than death, as a military commission under
 15 this chapter may direct.

16 **“§ 950tt. Intentionally causing serious bodily injury**

17 “(a) OFFENSE.—Any person subject to this chapter
 18 who intentionally causes serious bodily injury to one or
 19 more persons, including lawful combatants, in violation of
 20 the law of war shall be punished, if death results to one
 21 or more of the victims, by death or such other punishment
 22 as a military commission under this chapter may direct,
 23 and, if death does not result to any of the victims, by such
 24 punishment, other than death, as a military commission
 25 under this chapter may direct.

1 “(b) SERIOUS BODILY INJURY DEFINED.—In this
 2 section, the term ‘serious bodily injury’ means bodily in-
 3 jury which involves—

4 “(1) a substantial risk of death;

5 “(2) extreme physical pain;

6 “(3) protracted and obvious disfigurement; or

7 “(4) protracted loss or impairment of the func-
 8 tion of a bodily member, organ, or mental faculty.

9 **“§ 950uu. Mutilating or maiming**

10 “Any person subject to this chapter who intentionally
 11 injures one or more protected persons by disfiguring the
 12 person or persons by any mutilation of the person or per-
 13 sons, or by permanently disabling any member, limb, or
 14 organ of the body of the person or persons, without any
 15 legitimate medical or dental purpose, shall be punished,
 16 if death results to one or more of the victims, by death
 17 or such other punishment as a military commission under
 18 this chapter may direct, and, if death does not result to
 19 any of the victims, by such punishment, other than death,
 20 as a military commission under this chapter may direct.

21 **“§ 950vv. Murder in violation of the law of war**

22 “Any person subject to this chapter who intentionally
 23 kills one or more persons, including lawful combatants, in
 24 violation of the law of war shall be punished by death or

1 such other punishment as a military commission under
 2 this chapter may direct.

3 **“§ 950ww. Destruction of property in violation of the**
 4 **law of war**

5 “Any person subject to this chapter who intentionally
 6 destroys property belonging to another person in violation
 7 of the law of war shall punished as a military commission
 8 under this chapter may direct.

9 **“§ 950xx. Using treachery or perfidy**

10 “Any person subject to this chapter who, after invit-
 11 ing the confidence or belief of one or more persons that
 12 they were entitled to, or obliged to accord, protection
 13 under the law of war, intentionally makes use of that con-
 14 fidence or belief in killing, injuring, or capturing such per-
 15 son or persons shall be punished, if death results to one
 16 or more of the victims, by death or such other punishment
 17 as a military commission under this chapter may direct,
 18 and, if death does not result to any of the victims, by such
 19 punishment, other than death, as a military commission
 20 under this chapter may direct.

21 **“§ 950yy. Improperly using a flag of truce**

22 “Any person subject to this chapter who uses a flag
 23 of truce to feign an intention to negotiate, surrender, or
 24 otherwise suspend hostilities when there is no such inten-

tion shall be punished as a military commission under this chapter may direct.

“§ 950zz. Improperly using a distinctive emblem

“Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

“§ 950aaa. Intentionally mistreating a dead body

“Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

“§ 950bbb. Rape

“Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

“§ 950ccc. Hijacking or hazarding a vessel or aircraft

“Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a

1 legitimate military objective shall be punished, if death re-
 2 sults to one or more of the victims, by death or such other
 3 punishment as a military commission under this chapter
 4 may direct, and, if death does not result to any of the
 5 victims, by such punishment, other than death, as a mili-
 6 tary commission under this chapter may direct.

7 **“§ 950ddd. Terrorism**

8 “Any person subject to this chapter who intentionally
 9 kills or inflicts great bodily harm on one or more protected
 10 persons, or intentionally engages in an act that evinces
 11 a wanton disregard for human life, in a manner calculated
 12 to influence or affect the conduct of government or civilian
 13 population by intimidation or coercion, or to retaliate
 14 against government conduct, shall be punished, if death
 15 results to one or more of the victims, by death or such
 16 other punishment as a military commission under this
 17 chapter may direct, and, if death does not result to any
 18 of the victims, by such punishment, other than death, as
 19 a military commission under this chapter may direct.

20 **“§ 950eee. Providing material support for terrorism**

21 “(a) OFFENSE.—Any person subject to this chapter
 22 who provides material support or resources, knowing or
 23 intending that they are to be used in preparation for, or
 24 in carrying out, an act of terrorism (as set forth in section
 25 950ddd of this title), or who intentionally provides mate-

1 rial support or resources to an international terrorist orga-
 2 nization engaged in hostilities against the United States,
 3 knowing that such organization has engaged or engages
 4 in terrorism (as so set forth), shall be punished as a mili-
 5 tary commission under this chapter may direct.

6 “(b) MATERIAL SUPPORT OR RESOURCES DE-
 7 FINED.—In this section, the term ‘material support or re-
 8 sources’ has the meaning given that term in section
 9 2339A(b) of title 18.

10 **“§ 950fff. Wrongfully aiding the enemy**

11 “Any person subject to this chapter who, in breach
 12 of an allegiance or duty to the United States, knowingly
 13 and intentionally aids an enemy of the United States, or
 14 one of the co-belligerents of the enemy, shall be punished
 15 as a military commission under this chapter may direct.

16 **“§ 950ggg. Spying**

17 “Any person subject to this chapter who, in violation
 18 of the law of war and with intent or reason to believe that
 19 it is to be used to the injury of the United States or to
 20 the advantage of a foreign power, collects or attempts to
 21 collect information by clandestine means or while acting
 22 under false pretenses, for the purpose of conveying such
 23 information to an enemy of the United States, or one of
 24 the co-belligerents of the enemy, shall be punished by

1 death or such other punishment as a military commission
2 under this chapter may direct.

3 **“§ 950hhh. Contempt**

4 “A military commission under this chapter may pun-
5 ish for contempt any person who uses any menacing word,
6 sign, or gesture in its presence, or who disturbs its pro-
7 ceedings by any riot or disorder.

8 **“§ 950iii. Perjury and obstruction of justice**

9 “A military commission under this chapter may try
10 offenses and impose such punishment as the military com-
11 mission may direct for perjury, false testimony, or ob-
12 struction of justice related to the military commission.”.

13 (2) TABLES OF CHAPTERS AMENDMENTS.—The
14 tables of chapters at the beginning of subtitle A and
15 part II of subtitle A of title 10, United States Code,
16 are each amended by inserting after the item relat-
17 ing to chapter 47 the following new item:

“Chapter 47A. Military Commissions 948a”.

18 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

19 (1) SUBMITTAL OF PROCEDURES.—Not later
20 than 90 days after the date of the enactment of this
21 Act, the Secretary of Defense shall submit to the
22 Committees on Armed Services of the Senate and
23 the House of Representatives a report setting forth
24 the procedures for military commissions prescribed

1 under chapter 47A of title 10, United States Code
2 (as added by subsection (a)).

3 (2) SUBMITTAL OF MODIFICATIONS.—Not later
4 than 60 days before the date on which any proposed
5 modification of the procedures described in para-
6 graph (1) shall go into effect, the Secretary shall
7 submit to the committees of Congress referred to in
8 that paragraph a report describing such modifica-
9 tion.

10 **SEC. 5. AMENDMENTS TO OTHER LAWS.**

11 (a) DETAINEE TREATMENT ACT OF 2005.—Section
12 1004(b) of the Detainee Treatment Act of 2005 (title X
13 of Public Law 109–148; 119 Stat. 2740; 42 U.S.C.
14 200dd–1(b)) is amended—

15 (1) by striking “may provide” and inserting
16 “shall provide”;

17 (2) by inserting “or investigation” after “crimi-
18 nal prosecution”; and

19 (3) by inserting “whether before United States
20 courts or agencies, foreign courts or agencies, or
21 international courts or agencies,” after “described in
22 that subsection,”.

23 (b) UNIFORM CODE OF MILITARY JUSTICE.—Chap-
24 ter 47 of title, 10, United States Code (the Uniform Code
25 of Military Justice), is amended as follows:

1 (1) Section 802 (article 2 of the Uniform Code
2 of Military Justice) is amended by adding at the end
3 the following new paragraph:

4 “(13) Lawful enemy combatants (as that term
5 is defined in section 948a(3) of this title) who vio-
6 late the law of war.”.

7 (2) Section 821 (article 21 of the Uniform Code
8 of Military Justice) is amended by striking “by stat-
9 ute or law of war”.

10 (3) Section 836(a) (article 36(a) of the Uniform
11 Code of Military Justice) is amended by inserting
12 “(other than military commissions under chapter
13 47A of this title)” after “other military tribunals”.

14 (c) PUNITIVE ARTICLE OF CONSPIRACY.—Section
15 881 of title 10, United States Code (article 81 of the Uni-
16 form Code of Military Justice)), is amended—

17 (1) by inserting “(a)” before “Any person”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(b) Any person subject to this chapter or chapter
21 47A of this title who conspires with any other person to
22 commit an offense under the law of war, and who know-
23 ingly does an overt act to effect the object of the con-
24 spiracy, shall be punished, if death results to one or more
25 of the victims, by death or such other punishment as a

1 court-martial or military commission may direct, and, if
 2 death does not result to any of the victims, by such pun-
 3 ishment, other than death, as a court-martial or military
 4 commission may direct.”.

5 (d) REVIEW OF JUDGMENTS OF MILITARY COMMIS-
 6 SIONS.—

7 (1) REVIEW BY SUPREME COURT.—Section
 8 1259 of title 28, United States Code, is amended by
 9 adding at the end the following new paragraph:

10 “(5) Cases tried by military commission and re-
 11 viewed by the United States Court of Appeals for
 12 the Armed Forces under section 950f of title 10.”.

13 (2) DETAINEE TREATMENT ACT OF 2005.—Sec-
 14 tion 1005(e) of the Detainee Treatment Act of 2005
 15 (title X of Public Law 109–148; 119 Stat. 2740; 10
 16 U.S.C. 801 note) is amended—

17 (A) in paragraphs (3) and (4), by striking
 18 “United States Court of Appeals for the Dis-
 19 trict of Columbia Circuit” each place it appears
 20 and inserting “United States Court of Appeals
 21 for the Armed Forces”; and

22 (B) in paragraph (3)—

23 (i) in subparagraph (A), by striking
 24 “pursuant to Military Commission Order
 25 No. 1. dated August 31, 2005 (or any suc-

cessor military order)” and inserting “by a military commission under chapter 47A of title 10, United States Code”;

(ii) by striking subparagraph (B) and inserting the following new subparagraph (B):

“(ii) GRANT OF REVIEW.—Review under this paragraph shall be as of right.”;

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking “pursuant to the military order” and inserting “by a military commission”; and

(bb) by striking “at Guantánamo Bay, Cuba”; and

(II) in clause (ii), by striking “pursuant to such military order” and inserting “by the military commission”; and

(iv) in subparagraph (D)(i), by striking “specified in the military order” and inserting “specified for a military commission”.

1 **SEC. 6. HABEAS CORPUS MATTERS.**

2 (a) IN GENERAL.—Section 2241 of title 28, United
3 States Code, is amended—

4 (1) by striking subsection (e) (as added by sec-
5 tion 1005(e)(1) of Public Law 109–148 (119 Stat.
6 2742)) and by striking subsection (e) (as added by
7 added by section 1405(e)(1) of Public Law 109–163
8 (119 Stat. 3477)); and

9 (2) by adding at the end the following new sub-
10 section:

11 “(e)(1) No court, justice, or judge shall have jurisdic-
12 tion to hear or consider an application for a writ of habeas
13 corpus filed by or on behalf of an alien detained outside
14 of the United States who—

15 “(A) is currently in United States custody; or

16 “(B) has been determined by the United States
17 to have been properly detained as an enemy combat-
18 ant.

19 “(2) Except as provided in paragraphs (2) and (3)
20 of section 1005(e) of the Detainee Treatment Act of 2005
21 (10 U.S.C. 801 note), no court, justice, or judge shall have
22 jurisdiction to hear or consider any other action against
23 the United States or its agents relating to any aspect of
24 the detention, treatment, or trial of an alien detained out-
25 side of the United States who—

26 “(A) is currently in United States custody; or

1 “(B) has been determined by the United States
2 to have been properly detained as an enemy combat-
3 ant.

4 “(3) In this subsection, the term ‘United States’,
5 when used in a geographic sense, has the meaning given
6 that term in section 1005(g) of the Detainee Treatment
7 Act of 2005.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act, and shall apply to all cases, without ex-
11 ception, pending on or after the date of the enactment of
12 this Act which relate to any aspect of the detention, treat-
13 ment, or trial of an alien detained outside the United
14 States (as that term is defined in section 2241(e)(3) of
15 title 28, United States Code (as added by subsection (a))
16 since September 11, 2001.

17 **SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING**
18 **GROUND FOR CERTAIN CLAIMS.**

19 (a) **IN GENERAL.**—No person may invoke the Geneva
20 Conventions or any protocols thereto as an individually en-
21 forceable right in any civil action against an officer, em-
22 ployee, member of the Armed Forces or another agent of
23 the United States Government, or against the United
24 States, for the purpose of any claim for damages for
25 death, injury, or damage to property in any court of the

1 United States or its States or territories. This subsection
 2 does not affect the obligations of the United States under
 3 the Geneva Conventions.

4 (b) GENEVA CONVENTIONS DEFINED.—In this sec-
 5 tion, the term “Geneva conventions” means—

6 (1) the Convention for the Amelioration of the
 7 Condition of the Wounded and Sick in Armed
 8 Forces in the Field, done at Geneva August 12,
 9 1949 (6 UST 3114);

10 (2) the Convention for the Amelioration of the
 11 Condition of the Wounded, Sick, and Shipwrecked
 12 Members of the Armed Forces at Sea, done at Gene-
 13 va August 12, 1949 (6 UST 3217);

14 (3) the Convention Relative to the Treatment of
 15 Prisoners of War, done at Geneva August 12, 1949
 16 (6 UST 3316); and

17 (4) the Convention Relative to the Protection of
 18 Civilian Persons in Time of War, done at Geneva
 19 August 12, 1949 (6 UST 3516).

20 **SEC. 8. REVISION TO WAR CRIMES OFFENSE UNDER FED-**
 21 **ERAL CRIMINAL CODE.**

22 (a) IN GENERAL.—Section 2441 of title 18, United
 23 States Code, is amended—

24 (1) in subsection (c), by striking paragraph (3)
 25 and inserting the following new paragraph (3):

1 “(3) which constitutes a grave breach of com-
 2 mon Article 3 (as defined in subsection (d)) when
 3 committed in the context of and in association with
 4 an armed conflict not of an international character;
 5 or”; and

6 (2) by adding at the end the following new sub-
 7 section:

8 “(d) COMMON ARTICLE 3 VIOLATIONS.—

9 “(1) GRAVE BREACH OF COMMON ARTICLE 3.—
 10 In subsection (c)(3), the term ‘grave breach of com-
 11 mon Article 3’ means any conduct (such conduct
 12 constituting a grave breach of common Article 3 of
 13 the international conventions done at Geneva August
 14 12, 1949), as follows:

15 “(A) TORTURE.—The act of a person who
 16 commits, or conspires or attempts to commit,
 17 an act specifically intended to inflict severe
 18 physical or mental pain or suffering (other than
 19 pain or suffering incidental to lawful sanctions)
 20 upon another person within his custody or
 21 physical control for the purpose of obtaining in-
 22 formation or a confession, punishment, intimi-
 23 dation, coercion, or any reason based on dis-
 24 crimination of any kind.

1 “(B) CRUEL, UNUSUAL, OR INHUMANE
2 TREATMENT OR PUNISHMENT.—The act of a
3 person who subjects another person in the cus-
4 tody or under the physical control of the United
5 States Government, regardless of nationality or
6 physical location, to cruel, unusual, or inhu-
7 mane treatment or punishment prohibited by
8 the Fifth, Eighth, and 14th Amendments to the
9 Constitution of the United States.

10 “(C) PERFORMING BIOLOGICAL EXPERI-
11 MENTS.—The act of a person who subjects, or
12 conspires or attempts to subject, one or more
13 persons within his custody or physical control to
14 biological experiments without a legitimate med-
15 ical or dental purpose and in so doing endan-
16 gers the body or health of such person or per-
17 sons.

18 “(D) MURDER.—The act of a person who
19 intentionally kills, or conspires or attempts to
20 kill, or kills whether intentionally or uninten-
21 tionally in the course of committing any other
22 offense under this section, one or more persons
23 taking no active part in hostilities, including
24 those placed out of active combat by sickness,
25 wounds, detention, or any other cause.

1 “(E) MUTILATION OR MAIMING.—The act
2 of a person who intentionally injures, or con-
3 spires or attempts to injure, or injures whether
4 intentionally or unintentionally in the course of
5 committing any other offense under this sec-
6 tion, one or more persons taking no active part
7 in hostilities, including those placed out of ac-
8 tive combat by sickness, wounds, detention, or
9 any other cause, by disfiguring such person or
10 persons by any mutilation thereof or by perma-
11 nently disabling any member, limb, or organ of
12 the body of such person or persons, without any
13 legitimate medical or dental purpose.

14 “(F) INTENTIONALLY CAUSING SERIOUS
15 BODILY INJURY.—The act of a person who in-
16 tentiously causes, or conspires or attempts to
17 cause, serious bodily injury to one or more per-
18 sons, including lawful combatants, in violation
19 of the law of war.

20 “(G) RAPE.—The act of a person who
21 forcibly or with coercion or threat of force
22 wrongfully invades, or conspires or attempts to
23 invade, the body of a person by penetrating,
24 however slightly, the anal or genital opening of

1 the victim with any part of the body of the ac-
2 cused, or with any foreign object.

3 “(H) SEXUAL ASSAULT OR ABUSE.—The
4 act of person who forcibly or with coercion or
5 threat of force engages, or conspires or at-
6 tempts to engage, in sexual contact with one or
7 more persons, or causes, or conspires or at-
8 tempts to cause, one or more persons to engage
9 in sexual contact.

10 “(I) TAKING HOSTAGES.—The act of a
11 person who, having knowingly seized or de-
12 tained one or more persons, threatens to kill,
13 injure, or continue to detain such person or per-
14 sons with the intent of compelling any nation,
15 person other than the hostage, or group of per-
16 sons to act or refrain from acting as an explicit
17 or implicit condition for the safety or release of
18 such person or persons.

19 “(2) DEFINITIONS.—In the case of an offense
20 under subsection (a) by reason of subsection
21 (c)(3)—

22 “(A) the term ‘severe mental pain or suf-
23 fering’ shall be applied for purposes of para-
24 graph (1)(A) in accordance with the meaning
25 given that term in section 2340(2) of this title;

1 “(B) the term ‘serious bodily injury’ shall
 2 be applied for purposes of paragraph (1)(F) in
 3 accordance with the meaning given that term in
 4 section 113(b)(2) of this title; and

5 “(C) the term ‘sexual contact’ shall be ap-
 6 plied for purposes of paragraph (1)(G) in ac-
 7 cordance with the meaning given that term in
 8 section 2246(3) of this title.

9 “(3) INAPPLICABILITY OF CERTAIN PROVISIONS
 10 WITH RESPECT TO COLLATERAL DAMAGE OR INCI-
 11 DENT OF LAWFUL ATTACK.—The intent specified for
 12 the conduct stated in subparagraphs (D), (E), and
 13 (F) of paragraph (1) precludes the applicability of
 14 those subparagraphs to an offense under subsection
 15 (a) by reasons of subsection (c)(3) with respect to—

16 “(A) collateral damage; or

17 “(B) death, damage, or injury incident to
 18 a lawful attack.

19 “(4) INAPPLICABILITY OF TAKING HOSTAGES
 20 TO PRISONER EXCHANGE.—Paragraph (1)(I) does
 21 not apply to an offense under subsection (a) by rea-
 22 son of subsection (c)(3) in the case of a prisoner ex-
 23 change during wartime.”.

24 (b) CONSTRUCTION.—Such section is further amend-
 25 ed by adding at the end the following new subsections:

1 “(e) INAPPLICABILITY OF FOREIGN SOURCES OF
 2 LAW IN INTERPRETATION.—No foreign source of law shall
 3 be considered in defining or interpreting the obligations
 4 of the United States under this title.

5 “(f) NATURE OF CRIMINAL SANCTIONS.—The crimi-
 6 nal sanctions in this section provide penal sanctions under
 7 the domestic law of the United States for grave breaches
 8 of the international conventions done at Geneva August
 9 12, 1949. Such criminal sanctions do not alter the obliga-
 10 tions of the United States under those international con-
 11 ventions.”.

12 (c) PROTECTION OF CERTAIN UNITED STATES GOV-
 13 ERNMENT PERSONNEL.—Such section is further amended
 14 by adding at the end the following new subsection:

15 “(g) PROTECTION OF CERTAIN UNITED STATES
 16 GOVERNMENT PERSONNEL.—The provisions of section
 17 1004 of the Detainee Treatment Act of 2005 (42 U.S.C.
 18 2000dd–1) shall apply with respect to any criminal pros-
 19 ecution relating to the detention and interrogation of indi-
 20 viduals described in such provisions that is grounded in
 21 an offense under subsection (a) by reason of subsection
 22 (c)(3) with respect to actions occurring between Sep-
 23 tember 11, 2001, and December 30, 2005.”.

1 **SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS**
2 **OF COMBATANT STATUS REVIEW TRIBUNALS**
3 **OF PROPRIETY OF DETENTION.**

4 Section 1005(e)(2)(B)(i) of the Detainee Treatment
5 Act of 2005 (title X of Public Law 109–148; 119 Stat.
6 2742; 10 U.S.C. 801 note) is amended by striking “the
7 Department of Defense at Guantanamo Bay, Cuba” and
8 inserting “the United States”.

9 **SEC. 10. SEVERABILITY.**

10 If any provision of this Act or amendment made by
11 a provision of this Act, or the application of such provision
12 or amendment to any person or circumstance, is held to
13 be unconstitutional, the remainder of this Act and the
14 amendments made by this Act, and the application of such
15 provisions and amendments to any other person or cir-
16 cumstance, shall not be affected thereby.

Calendar No. 611

109TH CONGRESS
2^D Session

S. 3901

A BILL

To authorize trial by military commission for violations of the law of war, and for other purposes.

SEPTEMBER 14, 2006

Read twice and placed on the calendar